

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1369 of 1993****For Approval and Signature:****HON'BLE MR.JUSTICE S.R.BRAHMBHATT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SUDHIRCHANDRA B JOSHI - Appellant
Versus
LILADHAR B VYAS & 2 - Respondents

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Appearance :

MR Manish Upadhyay for PRANAV G DESAI for Appellant

MR SUDHIR M MEHTA for Respondent No(s).: 1,2.

MR KC SHAH ADDL PP for Respondent No(s).: 3.

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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 02/08/2005

ORAL JUDGMENT

1. Heard Shri Upadhyay for Mr. Pranav Desai for the appellant, Shri Sudhir Mehta, learned advocate for the respondent Nos. 1 & 2 and Mr. K.C. Shah, learned

Addl.P.P. for the respondent No. 3 State.

2. The appellant Vadodara Municipal Corporation through its Food Inspector has preferred the present acquittal appeal challenging the order of acquittal dated 18.4.1991 passed by the Judicial Magistrate First Class (Municipal) Baroda in Criminal Case No. 1749 of 1988 acquitting the accused of the offence punishable under Section 2 (1)(A) of the Prevention of Food Adulteration Act, 1954 (herein after referred to as "the Act" for short). This Court (Coram: R.D. Vyas, J.) vide order dated 16.12.1993 granted leave and admitted the appeal.
3. The case of the prosecution is that on 20.2.1988, in the morning at about 10-00 AM the original complainant Food Inspector visited the shop of the accused for collecting samples for analysis. The accused was selling curd, milk etc. The accused No. 2 was present in the shop. The milk stored in the container was that of a cow milk. The Food Inspector complainant collected 750 grms. of milk on payment of Rs.3.75 ps. and issued necessary notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as "the Rules" for short). The sample of milk was divided into three equal parts and it was collected into three dried, clean and transparent bottles, which

were sealed with airtight seal and properly wrapped. The complainant after applying the seal of Local Health Authority in accordance with law and filling the details as per Rule 15 of the Rules and affixing the signature of the accused and panch, drawn panchnama. As the subject sample food article was found not in conformity with the standard prescribed under the Rules, necessary consent was obtained from the Local Health Authority and on receiving the same, the complaint was lodged. The concerned Local Health Authority issued notice under Section 13(2) of the Act along with the report of the Public Analyst to the accused, so as to afford them an opportunity of having the sample further examined by the Central Food Laboratory. After ascertaining the prima-facie case, the plea of accused was recorded by the trial Court and case was proceeded further. The trial Court has framed three issues namely (i) Whether the prosecution proves beyond doubt that sample food article i.e. milk is contrary to the standard laid down in the Act and Rules? (ii) Whether the consent order Ex.23 is legal and valid? (iii) What order. The trial Court has answered first issue in affirmative, second issue in negative and third as per order.

4. It appears from the record that trial Court has mainly

relied upon the submission that consent for lodging prosecution was not legal as it was issued without application of mind and therefore, the entire prosecution stands vitiated and accepting this submission, the trial Court has recorded acquittal under impugned order dated 18th April, 1991.

5. Shri Upadhyay for Shri Pranav Desai for the appellant has submitted that the impugned order deserves to be quashed and set aside as it is made only on the ground of so called infirmity in the order of consent. The reasoning of the learned Judge for holding the consent order to be invalid is unsustainable in view of the fact that the Apex Court has in case of SURESH H. RAJPUT AND OTHERS VS. BHARTIBEN PRAVINBHAI SONI AND OTHERS, reported in (1996) 7 SCC 199 held that the consent order need not enlist elaborate reasons. In the present case the action of Local Health Authority in according sanction is only an administrative act and not a quasi judicial one and need not to be contained elaborate reasoning as it is decided by many courts. The Apex Court held that the consenting authority has to prima-facie see whether the allegations made in the report are sufficient for initiation of prosecution. In the instance case, Shri Upadhyay submitted that consent

order in terms, say that there is sufficient material to prosecute the accused and therefore, the consent order cannot be said to be illegal and invalid on this count. Shri Upadhyay has further submitted that as this is the sole ground on which the acquittal is based, the order impugned deserves to be reversed and as the finding of the public analyst clearly indicates that the sample food article was not in conformity with the standard laid down under the Act, the accused be convicted and be punished accordingly. Shri Upadhyay has alternatively submitted that as the elaborate analysis of the evidence for adulteration is absent in the order, the matter may be remanded to the trial Court for recording appropriate finding on that aspect.

6. Shri Mehta, learned counsel appearing for the respondent Nos. 1 and 2 original accused has submitted that order of acquittal deserves to be maintained in the acquittal appeal. Shri Mehta has submitted that in light of the Apex Court judgment in case of Suresh H. Rajput (Supra), the proposition that the consent order was illegal cannot be sustained. However, he submitted that in the acquittal appeal, it is open to the appellant accused to point out relevant factors and reasons from the record for sustaining the order of

acquittal that may be different then the reasoning recorded by the trial Court for order of acquittal. This proposition could not be effectively controverted by the learned counsel for the appellant. Shri Mehta has submitted that sample food article was that of cow milk. He invited this court's attention to Ex.21, the report of the Public Analyst, which shows that the sample food article was not meeting the standard of maintaining milk solid not fat of 8.5%. It was recorded to contain milk solid not fat of 7.86%, against the minimum standard of 8.5%. Except this, there is no other deficiency recorded by the public analyst. On the contrary, it was found in the report of the Public Analyst that content of milk fat, which is required to be minimum of 3.5% was recorded to be 6.20%. That finding should go in favour of the accused as the report cannot be said to be a conclusive report proving guilt of the accused. Shri Mehta has relied upon the judgment of the Apex Court in case of 1995 Supp(1) Supreme Court Cases 247 in case of **ADMINISTRATOR OF THE CITY OF NAGPUR vs. LAXMAN AND ANOTHER**. The Apex Court in an identical facts held that the court below were justify in giving benefit of doubt to the accused. The relevant portion deserves to be set out as under :

" 2. This appeal against acquittal arises under Prevention of Food Adulteration Act. The whole question is whether the sample of cow milk is adulterated so as to attract the penal provision of the Act. Learned Magistrate who acquitted the respondent who was a small milk vendor noted that the fat percentage is 6% as against 3.5% which is more than the standard prescribed for cow milk. The only shortfall was that S.N.F. Was 7.3% where it ought to have been 8.5%. Further, it noted that the total solid are 13.37 which is again more than the satisfying standard of cow milk. Under these circumstances, we cannot say that courts below have erred in acquitting them giving the benefit of doubt to the respondents. The appeal is, therefore, dismissed. However, other questions of law which have been debated by the courts below do not really matter, therefore, we do not propose to examine the same."

7. Shri Mehta has also relied on the decision of Punjab & Haryana High Court in case of **Om Prakash Vs. State of Haryana**, reported in 2000 (1) FAC 24, decision in case of **Hans Raj Vs. State of Haryana**, reported in 2000 (1)

p.255, in case of **State of Haryana Vs. Girdhari Lal**, reported in 2004(1) p.129.

8. This court has perused the record and heard the counsel of the parties at length. The finding of the trial Court in respect of infirmity in the order of consent deserves to be reversed in view of the Apex Court judgment in case of Suresh H. Rajput and others (supra), accordingly, this finding of infirmity in sanction is quashed and set aside.
9. As the order of acquittal is based on a sole finding of infirmity in the order of sanction and as the said finding is reversed by this court, ordinarily the court would have remanded the matter to the trial Court for recording its finding on other issues. However, in view of the decision of the Apex Court in case of Administrator of the City of Nagpur Vs. Laxman and another reported in 1995 Supp(1) Supreme Court Cases 247, which help the accused and the ratio of the decision of Punjab and Haryana High Court in identical matters in case of Om Prakash Vs. State of Haryana (supra), Hans Raj Vs. State of Haryana (Supra) and State of Haryana Vs. Girdhari Lal (Supra), this court is of the view that order of acquittal does not call for any interference in this acquittal appeal as the

report of the Public Analyst cannot be said to be conclusively proving the adulteration and it leaves room for doubt. In view of this, the benefit of doubt deserves to be granted to the accused and hence, the order of acquittal is not required to be disturbed in this appeal.

7. Accordingly, this court is not inclined to remand the matter and interfere in the order of acquittal impugned in this appeal and in the result, appeal deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J)

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